(79)

PROVISIONAL
For participants only

CERD/C/SR.950
13 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 950th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 August 1992, at 10 a.m.

Chairman: Mr. AHMADU

CONTENTS

Submission of reports by States parties under article 9, paragraph 1, of the Convention

Draft general recommendations

Second Decade to Combat Racism and Racial Discrimination

Draft model legislation

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

GE.92-17073/4782B (E)

The meeting was called to order at 10.40 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 6)

Draft general recommendations

Mr. BANTON suggested that, in view of the limited time available, a small group be set up to attempt to reach a consensus on the draft general recommendations to be considered. The Committee had two options; either to adopt the recommendations without discussion or to postpone discussion until a later date.

The CHAIRMAN suggested establishing a working group consisting of four or five members.

After an exchange of views in which Mr. de GOUTTES, Mr. RECHETOV and Mr. ABOUL-NASR took part, the CHAIRMAN said he believed the majority opinion was that consideration of the draft general recommendations should be postponed until the next session, unless the Committee found time to discuss them before the end of the current session.

It was so agreed.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 10)

Draft model legislation (CERD/C/1991/Misc.4)

The CHAIRMAN suggested that a working group should be set up to consider the draft model legislation. It might be composed of Mr. Rechetov, Mr. Wolfrum, Mr. Shahi, Mr. Ferrero Costa and Mr. Aboul-Nasr.

In reply to a question by Mr. LAMPTEY, Mr. TIKHONOV (Secretary of the Committee) said that the working group would make suggestions for improving the text on draft model legislation, which would then be discussed by the Committee. In the light of that discussion, the working group would prepare a final text for approval by the Committee.

Mr. BANTON reminded members that he had already circulated a text entitled "Draft statement on model legislation". The Committee would need to include in its report at least some indication of its views on the matter. Did members wish to await a report from the proposed working group before deciding what its response would be?

Mr. LAMPTEY did not see how the working group would have time to consider the matter and submit a paper which the Committee could reasonably be expected to discuss and adopt. The matter was a very important one, and only

a few days of the session were left. He suggested that consideration of the question should be postponed until the next session: after all, it would not be the Committee's fault if action on the matter was delayed, since it had had no spring session, and the current session had been considerably shortened.

Mr. FERRERO COSTA said that, in his view, the working group should hold its first meeting as soon as possible. It could then decide for itself whether it had time to discuss the draft model legislation, or whether the matter should be deferred until the next session.

Mr. DIACONU pointed out that, as the body dealing with the subject of racial discrimination, the Committee would be expected to make a serious contribution to discussion of the draft model legislation proposed. He suggested that it should first be established whether or not the Committee's response on the draft legislation needed to be submitted that year. If that were so, the Committee would be obliged to make at least some comments, whether they were presented as the considered view of the Committee as a whole or simply as the opinions of individual members.

Mr. de GOUTTES said the proposed draft model legislation was an ambitious - perhaps over-ambitious - project. He urged that the working group should be allowed time to study it in depth, and to consider various solutions, possibly including the conversion of the draft legislation into a set of guidelines. It was important that all possible options should remain open.

Mr. WOLFRUM supported that suggestion, but pointed out that the draft model legislation had been considered at the previous session, and time might have been saved if the Secretariat had re-drafted the text on the basis of comments already made. Some members had expressed the view that the whole concept of model legislation, at least in the form presented, was not acceptable in that it laid too much emphasis on the criminal law approach. He would recommend that in drafting model legislation, at least some account should be taken of relevant human rights instruments. As it stood, several parts of the draft were in fact in contradiction with the Covenant on Civil and Political Rights.

Mr. SONG Shuhua said Mr. Diaconu's proposal merited consideration. If the Committee needed to have its response ready that year, it would have to postpone other work, but if the matter was less urgent, discussion could well be deferred until the next session.

Mr. ABOUL-NASR shared that view. The Committee ought not to take up work it would be unable to finish. All it could do was to state in its report that it had been prevented from giving the question the attention it deserved due to lack of time.

He was grateful to the Chairman for nominating him to represent Africa in the working group, but regretted that he could not accept, since he was not convinced that there was in fact any need for model legislation.

Mr. van BOVEN agreed that the concept of model legislation required further consideration, particularly since it did not appear to be acceptable to all members of the Committee. It was not merely a matter of making amendments, but of discussing the substance of the proposals. It was not the Committee's fault that it had no time for such debate at the current session.

The CHAIRMAN said he assumed it was the Committee's wish that a working group, consisting of Mr. Rechetov, Mr. Wolfrum, Mr. Shahi, Mr. Fererro Costa, Mr. Lamptey and Mr. Banton, should meet that afternoon with a view to reaching agreement on a statement to be included in its report to the General Assembly on the subject of draft model legislation.

It was so agreed.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

The CHAIRMAN invited the Committee to consider the draft texts of concluding observations on reports submitted by States parties, in the order in which the reports had been considered by the Committee.

Mr. de GOUTTES, speaking on a point of order, said consideration of its concluding observations was one of the most important of the Committee's tasks and called for special care. It was all the more important, therefore, that versions should be available in each of the working languages. While he realized that on the present occasion the Secretariat had been unable to prepare translations owing to lack of time, he would not wish that to be taken as a precedent. It should be clearly understood that the normal practice was for concluding observations to be circulated in all the Committee's working languages.

Fifth, sixth, seventh and eighth periodic reports of Belgium (CERD/C/194/Add.3) (continued)

Mr. FERRERO COSTA, country rapporteur, read out the following proposed concluding observations:

"1. The Committee noted with great interest the major constitutional and legislative reforms adopted in Belgium which have introduced positive changes in relations between the French-speaking and Dutch-speaking communities. Nevertheless, it requested Belgium to provide further information on the German-speaking community and other minorities with Belgian nationality in its next periodic report. In this regard, more demographic data were needed, together with information on the measures and policies designed to ensure the exercise of civil and human rights by these minorities on an equal footing with the majority communities.

"2. The Committee gave consideration to the Act of 30 July 1981 for the suppression of certain acts based on racism and was of the view that, while it represented progress in the campaign to combat racial discrimination in Belgium, the scope of the Act was too limited and thus was not complying fully with the provisions of article 4 of the Convention. The Committee also requested further substantive information on complaints lodged with the courts in connection with the implementation of the Act, and on the existence of groups currently promoting racial discrimination.

"3. The Committee also accorded special attention to the situation of aliens resident in Belgium and asked for further information on the exercise by such persons of the rights referred to in article 5 of the Convention on an equal footing with Belgian nationals, with special reference to the employment conditions of immigrant workers, which were of concern to the Committee.

"4. The Committee hoped that the next periodic report would be submitted in good time."

Mr. DIACONU noted that in paragraph 1 of the text reference was made to "the exercise of civil and human rights". Since civil rights in fact formed part of human rights, he suggested that the words "civil and" should be deleted.

In reply to a question from Mr. van BOVEN, Mr. FERRERO COSTA said that the phrase "other minorities with Belgian nationality" in paragraph 1 referred to groups from former Belgian colonies.

The concluding observations on the reports of Belgium, as amended, were approved.

The CHAIRMAN said that the Committee had concluded its consideration of the reports of Belgium.

Tenth and eleventh periodic reports of Ghana (CERD/C/197/Add.7) (continued)

Mr. LECHUGA HEVIA, country rapporteur, summarized the proposed concluding observations on the reports of Ghana.

Mr. BANTON read out the text in English:

"1. The Committee noted that, as a result of the important political changes now taking place in Ghana, including the adoption of a new Constitution and the election of a new Government, the report contained in document CERD/C/197/Add.7 was out of date.

"2. The Committee welcomed the announcement by the representative of the Government that the legislative measures adopted in the past few years to guarantee the rights of citizens, regardless of their ethnic origin, religion or sex, continued to be in force and will be strengthened when they are revised in order to bring them into line with the principles embodied in the new Constitution.

"3. The Committee pointed out that Ghana's next report should be prepared according to the guidelines adopted for this purpose and should contain all the information that was missing in the last report. The Committee needed to have copies of the new Constitution and new laws which had been adopted in order to make a proper assessment of the situation with regard to the implementation of the Convention in the country. It thanked the Government of Ghana for the interest it has shown in maintaining a constructive dialogue with the Committee."

Mr. GARVALOV proposed that the word "missing" should be replaced by "not provided" in the first sentence of the third paragraph.

The concluding observations on the reports of Ghana, as amended, were approved.

The CHAIRMAN said that the Committee had concluded its consideration of the reports of Ghana.

Eighth, ninth, tenth and eleventh periodic reports of Greece (CERD/C/210/Add.1) (continued)

Mr. WOLFRUM, country rapporteur, read out the following proposed concluding observations:

"1. The Committee expressed its appreciation that, after an interval of six years, the Government of Greece had renewed the dialogue with the Committee by filing its eleventh report which equally contained the eighth to tenth reports.

"2. In considering the report it was noted by the Committee that the Greek legal order implemented article 4 of the Convention. The Committee, however, also noted an absence of information about judicial proceedings in which the respective provisions of the Greek criminal law had been invoked.

"3. In order to determine whether the social differentiation of Muslims, Pomaks, Gypsies, Armenians and Albanians, especially but not solely in Western Thrace, had the effect of impairing the human rights and fundamental freedoms of members of those groups, the Committee called upon the Greek Government to include in its next periodic report information on the economic, social and cultural circumstances of these groups, bearing in mind the Committee's General Recommendation VIII regarding the criteria for the identification of ethnic groups, according to which the identification of individuals as members of a racial or ethnic group should only be based upon self-identification by the individual concerned.

"4. Bearing in mind the provision of article 2 (1) (c) of the Convention, the Committee called upon the Government of Greece to revise its Nationality Act as far as it differentiated between ethnic Greeks and non-ethnic Greeks, together with any legal or administrative practices which relied on such a distinction."

Various suggestions by other Committee members had been taken into account in drafting the observations, the only point on which there still appeared to be some difference of opinion being the reference to Albanians in paragraph 3. He had left that reference in the draft text because the question of Albanians had in fact been raised during the Committee's discussion by both Mr. Aboul-Nasr and Mr. Diaconu.

Mr. SONG Shuhua, referring to the penultimate line of paragraph 3, said that his recollection of the Committee's discussions of its definition of a racial or ethnic group was that it was based mainly - and not only - on self-identification.

Mr. BANTON proposed the deletion of the word "only", since the wording of General Recommendation VIII included neither "only" nor "mainly".

Mr. DIACONU said that he had misgivings about the reference to Albanians as an ethnic group in paragraph 3. It was true that he had raised the question, but the response of the representative of the Greek Government had been that, although there was a scattered population of Albanians in Greece, there was no Albanian minority as such. The Committee should perhaps be cautious about taking a position in the matter and requesting data on such a group. Furthermore, other groups to whom reference had been made, such as Macedonians, were not mentioned. He therefore proposed that the word "Albanians" should be replaced by the words "and others".

Mr. RECHETOV proposed replacing the word "implemented" by the words "is in accordance with" in paragraph 2. He would also prefer to end the sentence constituting paragraph 3 after the words "cultural circumstances of these groups", thus deleting the reference to the Committee's definition of racial and ethnic groups. It was a definition much cherished by all Committee members, including himself, but it was not a widely supported one and it might be inappropriate to seek to impose it on a State. He pointed out that the Committee was being somewhat inconsistent in its observations, since its comments on the report of Belgium made no mention of the fact that the Belgian Government did not recognize the existence of national minorities at all.

Mr. ABOUL-NASR said that, since the Committee's concluding observations would follow the narrative part of its report which would contain a description of the discussion, he would be in favour of reducing the concluding observations to the essentials and therefore endorsed the proposals made by Mr. Diaconu and Mr. Rechetov.

Mr. WOLFRUM said that, as country rapporteur, he could accept the replacement of the word "implemented" by the words "is in accordance with" in paragraph 2 and of the word "Albanians" by "and others" in paragraph 3, and the deletion of the word "only" in that paragraph. He recalled, however, that, when the question of Albanians and other groups had been raised, the representative of Greece had been reluctant to acknowledge the existence of any minority group; in the circumstances, he thought it necessary for the Committee to refer to the definition it had itself adopted by consensus in

General Recommendation VIII. The case of Belgium was somewhat different, since the representative of that country had not denied the existence of the groups to which the Committee had referred.

The CHAIRMAN, speaking in a personal capacity, suggested substituting the word "status" for "differentiation" at the beginning of paragraph 3.

Mr. SHAHI said that "status" did not at all convey the subtle implication of discrimination contained in the word "differentiation".

The CHAIRMAN withdrew his proposal. He took it that the Committee wished to approve the text of the concluding observations, with the proposed amendments except for the second proposal by Mr. Rechetov to delete the latter part of paragraph 3.

The concluding observations on the reports of Greece, as amended, were approved.

The CHAIRMAN said that the Committee had concluded its consideration of the reports of Greece.

Third and fourth periodic reports of Maldives (CERD/C/203/Add.1) (continued)

Mrs. SADIQ ALI, country rapporteur, read out the following proposed concluding observations:

"1. In concluding the review, the Committee regretted that the Maldives had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its reports. It hoped to receive a new report shortly.

"2. The Committee noted that the Maldives had stated that, since no forms of discrimination existed in the country, specific legislation was not required. The Committee reiterated that this is not a legally defensible interpretation of the obligations that a State assumes on acceding to the Convention."

Mr. ABOUL-NASR suggested that the concluding observations could be sent, together with the summary records of the relevant meetings of the Committee, with a covering letter to the Government of Maldives.

It might also be useful to have a reference in the concluding observations to the General Recommendation adopted by the Committee in 1972 (General Recommendation I).

Mr. BANTON suggested that the second sentence of paragraph 2 could be amended to begin: "Calling the attention of the State party to the Committee's General Recommendation I, the Committee reiterated that ...". The rest of the sentence would remain unchanged.

The concluding observations on the reports of Maldives, as amended, were approved.

The CHAIRMAN said he assumed the Committee agreed that the text of the Committee's General Recommendation I would be attached to the letter to be sent to the Government of Maldives.

He said that the Committee had concluded its consideration of the reports of Maldives.

Fifth periodic report of Colombia (CERD/C/191/Add.1) (continued)

Mr. WOLFRUM, country rapporteur, read out the following proposed concluding observations:

"1. The Committee took note of the reform of the Constitution and the substantial legal reforms introduced with a view to protecting human rights. It complimented legislation and the drafting of programmes to enhance the economic, social and educational conditions of the indigenous population. The Committee equally concluded that the indigenous population could benefit from the Government's plans for the conservation of the Amazon region.

"2. The Committee, however, noted that similar projects and programmes for the economic and social situation of indigenous peoples had been launched previously and hence the Committee had expected to be informed about their results.

"3. In general, the report lacked information on the actual economic, social and education situation of the indigenous population. The next report should contain data on the economic, social and educational situation of indigenous groups compared to the rest of the population. Only on the basis of such data would the Committee be in a position to assess accurately the situation of the indigenous population. Further,

the Government of Colombia should include information on the factual situation of the black community, on which no adequate information was provided so far.

"4. The Committee reiterated its concern that article 4 of the Convention is not properly reflected in the national penal law.

"5. The Committee expressed concern about ongoing violence in Colombia. As already stated by the Human Rights Committee (CCPR/C/CRP.1/Add.18), the measures that have been taken by the Colombian Government do not seem to be sufficient so far to effectively protect the life, health and property of the citizen, and especially of members of the indigenous population."

The concluding observations on the report of Colombia were approved.

The CHAIRMAN said the Committee had concluded its consideration of the report of Colombia.

Ninth and tenth periodic reports of Yemen (CERD/C/209/Add.2) (continued)

Mrs. SADIQ ALI, country rapporteur, read out the following proposed concluding observations:

"1. The Committee appreciated the Yemen Arab Republic's desire to enter into a dialogue so soon after the unification of the country.

"2. The Committee commended the State's willingness to accept such a large number of refugees from Somalia and Eritrea (Ethiopia). It noted that the report lacked adequate information on the status of the Convention in domestic law and the demographic composition of the population and that articles 2, 4, 5 (e), 6 and 7 were not yet fully implemented. Yemen's statement that as no form of racial discrimination existed in the country article 4 had not been enacted, was unacceptable. It was stressed that legislation to enact article 4 is mandatory. The administrative and legal measures to combat prejudices which lead to racial discrimination in education and culture must also be described."

Mr. ABOUL-NASR said that the third sentence of paragraph 2 might be construed as meaning that the Committee believed racial discrimination did exist in Yemen. The point, however, was that, whether or not there was discrimination, the penal code must contain provisions to prohibit it. He also felt that the word "must" in the last sentence of the paragraph was unduly peremptory.

The CHAIRMAN, speaking in a personal capacity, said that he agreed with the view expressed by the previous speaker, and that the word "must" could be replaced by "ought" in the interests of courtesy to a State party. Similarly, the wording used in paragraph 2 of the concluding observations on the reports of Maldives could be adapted to suit the text under consideration.

Mr. YUTZIS said that the obligations arising under article 4 of the Convention were exhaustive, in that no State party could claim exemption unless it had entered a reservation when signing the Convention.

Mr. BANTON suggested that the third and fourth sentences of paragraph 2 might be replaced by one sentence, which would read: "Noting Yemen's statement that no form of racial discrimination existed in the country, the Committee decided to call the State party's attention to General Recommendation I".

Mr. GARVALOV said assertions that no racial discrimination existed in a given country had been encountered before in periodic reports, and the language used in the concluding observations should be direct and to the point.

Mr. FERRERO COSTA said that he agreed with Mr. Banton's proposal, but that it would be useful to reiterate the content of the Committee's General Recommendation I, with which the authorities in the State party concerned might not be familiar.

Mr. de GOUTTES said that what was required was a general formula for such cases which would refer to General Recommendation I, using wording on the lines of that contained in the concluding observations on the reports of Maldives, namely "... this is not a legally defensible interpretation of the obligations that a State assumes on acceding to the Convention".

Mr. SHAHI said that he agreed with the views expressed by the previous speakers.

The CHAIRMAN suggested that Mr. Banton and Mrs. Sadiq Ali should produce a revised draft of the concluding observations for consideration at the next meeting.

The meeting rose at 1.10 p.m.